

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH

DELAWARE CORNERSTONE BUILDERS

SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) and (8d) of the Code of Virginia between the State Water Control Board and Delaware Cornerstone Builders to resolve certain alleged violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of DEQ.
6. "Order" means this document, also known as a consent special order.
7. "Delaware Cornerstone Builders" means Delaware Cornerstone Builders, Inc. a Delaware corporation doing business in Virginia.

SECTION C: Findings of Facts and Conclusions of Law

1. Section 62.1-44.34:18 of the Code prohibits the discharge of oil into or upon state waters, lands, or storm drain systems. Section 62.1-44.34:19 of the Code requires the reporting of any oil discharges which may reasonably be expected to enter State waters, lands, or storm drain systems.
2. Delaware Cornerstone Builders was awarded contract N62470-01-D-3407 for Project R 162-00 by the United States Department of the Navy on June 12, 2001. This project was the demolition of various buildings and structures at the Yorktown Naval Weapons Station.
3. Delaware Cornerstone Builders subcontracted with Wrecking Corporation of America to perform the demolition of the buildings.
4. On or about October 4, 2001, in connection with the demolition work, three electrical transformers were removed from a utility pole adjacent to Building 507. The contents of the three electrical transformers, consisting of up to 31 gallons of mineral oil, were released into a hole adjacent to the building left from the earlier excavation of a sewer manhole.
5. On October 31, 2001, DEQ staff documented the alleged improper discharge of the oil from the transformers in violation of § 62.1-44.34:18 of the Code and noted the alleged failure to report an oil discharge in violation of § 62.1-44.34:19 of the Code.
6. On November 13, 2001, the oil-contaminated soil was excavated and disposed of pursuant to a DEQ approved clean-up plan. On November 19, 2001, DEQ determined that no additional remediation activities were required.
7. Notice of Violation No. 01-11-TRO-005 was issued to Delaware Cornerstone Builders on November 27, 2001 for the alleged unpermitted discharge of oil in violation of § 62.1-44.34:18 of the Code.
8. Delaware Cornerstone Builders maintains that it and its employees had no involvement in the alleged release of oil as described above.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Code § 62.1-44.15(8a) and (8d), orders Delaware Cornerstone Builders, and Delaware Cornerstone voluntarily agrees, to pay a civil charge of \$2,329 within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall include Delaware Cornerstone Builder's Federal Identification Number. Payment shall be made by check payable to the "Treasurer of Virginia" delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Delaware Cornerstone Builders, for good cause shown by Delaware Cornerstone Builders, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notices of Violation issued to Delaware Cornerstone Builders by DEQ cited above. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein, nor any defenses by Delaware Cornerstone Builders to such actions.
3. For purposes of this Order only, Delaware Cornerstone Builders does not contest the jurisdictional allegations in the Order, but it does not admit the factual allegations or legal conclusions contained herein. Delaware Cornerstone Builders denies any and all violations alleged against it as set forth herein and enters into this Order and agrees to pay the civil charge set forth above solely to settle this matter with the Board and DEQ.
4. Delaware Cornerstone Builders consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Delaware Cornerstone Builders declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order or any matter not resolved by this Order.
6. Failure by Delaware Cornerstone Builders to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority or any defenses Delaware Cornerstone Builders may have to such actions.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Delaware Cornerstone Builders shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Delaware Cornerstone Builders shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Delaware Cornerstone Builders shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 72 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Delaware Cornerstone Builders. Notwithstanding the foregoing, Delaware Cornerstone Builders agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Delaware Cornerstone Builders. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Delaware Cornerstone Builders from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Delaware Cornerstone Builders voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002

Robert G. Burnley, Director
Department of Environmental Quality

Delaware Cornerstone Builders, Inc. voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

State of Maryland
City/County of _____

The foregoing document was signed and acknowledged before me this _ day of _____, 2002, by _____, who is
Prabodh K. Goel

President, on behalf of Delaware Cornerstone Builders, Inc.

Notary Public

My commission expires: _____.